

DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED
NOV 20 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Revision of Rule and Policies for the)
Direct Broadcast Satellite Service)

IB Docket No. 95-168 ✓
PP Docket No. 93-253

COMMENTS OF PANAMSAT CORPORATION

PanAmSat Corporation ("PanAmSat") submits these comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-referenced proceeding. PanAmSat owns and operates the world's only privately-owned global satellite system in the Fixed Satellite Service ("FSS").

PanAmSat holds no Direct Broadcast Satellite ("DBS") authorizations, but is concerned with the precedential impact that the Commission's decision in this proceeding may have on the FSS. In the NPRM, the Commission has proposed a variety of changes to its rules and policies for the DBS service. Among other things, the Commission has proposed (1) to limit the amount of DBS spectrum that may be held by any single entity, and (2) to reassign reclaimed DBS channel resources through competitive bidding.

PanAmSat supports the first proposal and urges the Commission to extend to the FSS the kinds of measures it is proposing for the DBS service to limit excess concentration in the domestic satellite services. PanAmSat does not object to the second proposal so long as it is restricted to DBS applicants seeking to provide primarily U.S. domestic service. If the Commission does employ competitive bidding for DBS, however, it should acknowledge that there are unique circumstances associated with awarding licenses in the DBS service that are lacking when it comes to selection procedures for other satellite services.

No. of Copies rec'd
List ABCDE

0411

Discussion

1. **The Commission Properly Is Concerned With The Concentration Of Control With Respect To Orbital Resources.**

In the NPRM, the Commission notes that “allowing an entity to control an unlimited number of full-CONUS DBS channels ... could result in a lessening of competition among DBS providers and in the broader market for the distribution of multichannel video programming.”¹ To address this concern, the Commission has proposed to limit DBS licensees that are affiliated with other multichannel video programming distributors to a single full-CONUS orbital location.² In addition, the Commission has proposed, for all DBS operators, to “limit the aggregation of DBS channel assignments to a total of 32 at any combination of the orbital locations capable of full-CONUS service.”³

PanAmSat agrees that concentration of control with respect to DBS orbital resources will inhibit the growth of competition in the market for multichannel video programming distribution (“MVPD”). PanAmSat, however, urges the Commission to consider the problem of market concentration in satellite services generally.

To begin with, the Commission has taken an unnecessarily narrow view of the market for satellite-delivered multichannel video programming. FSS satellites provide multichannel video programming. Conversely, DBS satellites may be used to provide a variety of non-DBS services. Consequently, the Commission’s proposal to limit the number of full-CONUS DBS channels that any one entity may hold addresses only one facet of the problem. To fully address the barriers to competition in the MVPD market and in the satellite services markets, the Commission should broaden its inquiry to include an analysis of all satellite services and the relative level of competition in each.

For instance, the Commission was motivated in the NPRM to propose a DBS spectrum cap, in part, by the “relative scarcity” of orbital locations available for domestic DBS service.⁴ But prime orbital locations are scarce, and growing

¹ NPRM ¶ 33.

² Id. ¶¶ 39-40.

³ Id. ¶¶ 41-42.

⁴ Id. ¶ 41.

more so, for FSS services as well.⁵ The fair and equitable distribution of orbital slots, therefore, is equally essential to the promotion of competition in FSS markets as it is for the development of competition in the DBS market. And, because of the overlap of DBS and the FSS, enhanced competition in the FSS will help to promote the development of more competition in the MVPD market.

In the domestic FSS market, for example, Hughes Communications Galaxy, Inc., and GE Americom, the two dominant domestic satellite operators, control approximately 80% of in-orbit domestic satellites. Providing either of these companies with additional domestic orbital locations would further concentrate an already oligopolistic market and reduce the chance that a domestic FSS satellite would be used to provide video programming. If the domestic FSS market is to become competitive, the Commission must take affirmative steps to ensure that new entrants have a meaningful opportunity to participate in the market, which includes having reasonable access to desirable (*e.g.*, full-CONUS) orbital locations.

To achieve this end and promote competition in all facets of satellite service, PanAmSat has suggested, among other things, that the Commission impose a cap on the number of orbital locations that any single satellite operator should be allowed to hold.⁶ Other satellite providers have recognized the importance of capping the number of orbital locations assigned to each operator in order to distribute orbital locations equitably among all satellite carriers, including new entrants. For example, when it was a new entrant in the domestic market rather than the dominant satellite operator, Hughes itself advocated just such a cap.⁷

The Commission's proposal to limit the number of full-CONUS orbital locations that any DBS operator may hold is consistent with this position.⁸

⁵ See, *e.g.*, In re Orbital Communications Corporation, 9 FCC Rcd 6476 (1994).

⁶ See Application of Hughes Communications Galaxy, Inc., For Authority to Construct Launch and Operate a Hybrid Satellite at 123° W.L., File No. 68-SAT-P/LA-95, Opposition of PanAmSat (filed Sept. 25, 1995).

⁷ See In re Assignment of Orbital Locations to Space Stations in the Domestic Fixed-Satellite Service, 84 FCC.2d 584, 591 (1981) (Hughes arguing that "existing carriers should be limited to three orbital locations so that new entrants can be accommodated"); Application of RCA American Communications, Inc., 84 FCC.2d 622, 637-38 (1981) (Hughes suggesting that the Commission should consider limiting the number of orbital locations assigned to each carrier).

⁸ This proposal also is consistent with the Commission's suggestion that it will consider the importance of distributing fifty-state coverage locations in an equitable manner when it reviews

PanAmSat, therefore, supports the Commission's proposal and urges the Commission to continue to expand upon and apply this procompetitive principle more broadly, both in the DBS market and the FSS.

2. Any Decision To Auction DBS Channels Should Not Influence Future Proceedings Regarding The Use Of Auctions In Other Satellite Services.

In the NPRM, the Commission has proposed to use competitive bidding procedures to resolve mutually exclusive applications for domestic DBS channels.⁹ Aside from the inherent international aspects of any satellite service, which argues against any one country using auctions to assign rights to the orbital-frequency resource, PanAmSat does not oppose this proposal, as long as it is restricted to DBS applicants who seek to provide primarily U.S. domestic DBS services. This decision should not in any way serve as precedent for satellite services proceedings in which spectrum auctions are proposed for applicants who propose to serve non-U.S. territory.

As the Commission has recognized, the market for DBS services differs in important ways from that of other satellite services. For instance, DBS services have been, and may remain, strictly domestic in scope. As a result, many of the problems associated with the auctioning of international satellite licenses may not arise if DBS channels are auctioned.¹⁰ While the NPRM (§ 24) envisions "the possibility that [the Commission]... will permit U.S. DBS licensees to provide international service," that does not alter the essentially domestic character of the service. It remains the case that the ITU established the DBS service as a domestic service with a band plan consisting of domestic uses, and the NPRM

applications for replacement satellites. *See, e.g., In re GTE Spacenet Corp.*, 9 FCC Rcd 1271 (1994).

⁹ NPRM ¶¶ 72 *et seq.*

¹⁰ PanAmSat consistently has opposed the use of spectrum auctions for international satellite services because of the risk that other countries will similarly impose licensing fees on satellite operators. *See Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules*, CC Docket No. 92-297, Comments of PanAmSat (filed Sept. 7, 1995). Several Commissioners have echoed this concern. *See, e.g., Chairman Acknowledges International Auction Threat*, Mobile Satellite News, Vol. 7, No. 18 (Sept. 7, 1995) at 1 (Chairman Hundt explaining that U.S. satellite licensing auctions could "trigger a process in which a price is paid here and the next country says, 'I'm the next link in the chain, we'll do our auction, except ours is rigged by the government in our way.'"); Letter from the Hon. James H. Quello, Commissioner, FCC, to the Hon. Slade Gorton, U.S. Senate (June 23, 1993) ("I am particularly concerned that some foreign governments ... could use our competitive bidding requirement as a justification for retaliatory measures.") (reproduced in full at 139 Cong. Rec. S 7913, 7950 (June 24, 1993)).

(*id.*) acknowledges that licensees cannot provide DBS service in other countries without "modifying the BSS Plan to include the proposed international DBS service."

Conclusion

With the qualifications detailed herein, PanAmSat supports the Commission's proposed revisions to its DBS rules and policies.

Respectfully submitted,

PANAMSAT CORPORATION

By:

/s/ Joseph A. Godles

Joseph A. Godles

W. Kenneth Ferree

Goldberg, Godles, Wiener & Wright
1229 Nineteenth Street, NW
Washington, DC 20036

Its Attorneys

November 20, 1995